

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHRISTINA HAUDEK,

No. 13-13006

Plaintiff,

District Judge Sean F. Cox

v.

Magistrate Judge R. Steven Whalen

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

/

REPORT AND RECOMMENDATION

On July 12, 2013, Plaintiff Christina Haudek, through counsel, filed a Social Security Disability appeal pursuant to 42 U.S.C. § 405(g). Summons were issued on July 22, 2013. Although more than 120 days have elapsed since the complaint was filed, no proof of service has been filed, showing proper service of the summons and complaint on Defendant Commissioner of Social Security.

The case has been referred to me for issuance of a Report and Recommendation on dispositive matters, pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons discussed below, I recommend that the complaint be DISMISSED WITHOUT PREJUDICE for failure of timely service.

I. FACTS

Again, summonses were issued on July 22, 2013, yet Defendant Commissioner has

not yet been served. On November 21, 2013, I ordered Plaintiff to show cause in writing, on or before December 5, 2013, “why her complaint should not be dismissed without prejudice because of her failure to timely serve the Defendant within 120 days of filing the complaint.” [Doc. #6]. Although many months have passed since December, Plaintiff has not responded to the show cause order.

II. DISCUSSION

Under Fed.R.Civ.P. 4(m), service of a summons and complaint must be made upon a defendant within 120 days after filing the complaint, otherwise,

“...the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.”

By virtue of this Court’s show cause order, the Plaintiff was given notice of both the failure to serve and the risk of dismissal. Under Rule 4(m), the Court may act on its own initiative. Under the Rule, a mandatory extension of time for service requires a showing of good cause. The Plaintiff has not made that showing, and indeed has failed to respond in any manner to the show cause order. It appears that the Plaintiff has abandoned this litigation.

Under these circumstances, and given the passage of time since the Plaintiff filed her complaint, granting a discretionary extension of time would serve little purpose. In that Rule 4(m) otherwise provides that the Court “*shall* dismiss the action without

prejudice" (emphasis added), the Court has only one option.

III. CONCLUSION

I therefore recommend that the Court *sua sponte* dismiss Plaintiff's complaint without prejudice, for failure of timely service.

Any objections to this Report and Recommendation must be filed within 14 days of service of a copy hereof as provided for in 28 U.S.C. §636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within 14 days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than 20 pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the

objections.

s/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

Dated: June 12, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on June 12, 2014, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla
Case Manager to the
Honorable R. Steven Whalen